

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

United States of America, :  
Plaintiff(s), :  
vs. : Case Number: 1:08cr5  
1:10cv448  
Brian Lewis, : Chief Judge Susan J. Dlott  
Defendant(s). :

## ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on July 21, 2010 a Report and Recommendation (Doc. 28). Subsequently, the plaintiff filed objections to such Report and Recommendation (Doc. 29) and a memorandum in response to the objections was filed by United States (Doc. 30) after which Magistrate Judge Merz filed a Supplemental Report and Recommendation (Doc. 31).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, with regards to both the Report and Recommendation filed July 21, 2010 and the Supplemental Report and Recommendation filed August 18, 2010, defendant's § 2255 motion to vacate (Doc. 25) is untimely and fails to state a claim on which relief can be granted under that statute, it is **DENIED WITH PREJUDICE**. Since reasonable jurists will not

disagree with this conclusion, defendant is denied any requested certificate of appealability and the Court will certify that any appeal will be objectively frivolous.

IT IS SO ORDERED.

s/Susan J. Dlott  
Chief Judge Susan J. Dlott  
United States District Court